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HOUSE BILL 578

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Larry A. Larrañaga

AN ACT

RELATING TO SEX OFFENSES AGAINST CHILDREN; RESPONDING TO  
JESSICA' S LAW; INCREASING PENALTIES FOR CRIMINAL SEXUAL  
PENETRATION OF A CHILD UNDER THIRTEEN YEARS OF AGE; INCREASING  
MANDATORY MINIMUM IMPRISONMENT FOR CRIMINAL SEXUAL PENETRATION  
OF A CHILD THIRTEEN TO EIGHTEEN YEARS OF AGE; REQUIRING  
ELECTRONIC MONITORING OF CERTAIN SEX OFFENDERS ON PAROLE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-9-11 NMSA 1978 (being Laws 1975,  
Chapter 109, Section 2, as amended) is amended to read:

"30-9-11. CRIMINAL SEXUAL PENETRATION. --

A. Criminal sexual penetration is the unlawful and  
intentional causing of a person to engage in sexual  
intercourse, cunnilingus, fellatio or anal intercourse or the  
causing of penetration, to any extent and with any object, of

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1 the genital or anal openings of another, whether or not there  
2 is any emission.

3 B. Criminal sexual penetration does not include  
4 medically indicated procedures.

5 C. Criminal sexual penetration in the first degree  
6 consists of all criminal sexual penetration perpetrated:

7 (1) on a child under thirteen years of age;  
8 or

9 (2) by the use of force or coercion that  
10 results in great bodily harm or great mental anguish to the  
11 victim.

12 Whoever commits criminal sexual penetration in the first  
13 degree is guilty of a first degree felony. Whoever commits  
14 criminal sexual penetration in the first degree when the  
15 victim is a child who is under thirteen years of age is guilty  
16 of a first degree felony for criminal sexual penetration of a  
17 child.

18 D. Criminal sexual penetration in the second  
19 degree consists of all criminal sexual penetration  
20 perpetrated:

21 (1) on a child thirteen to eighteen years of  
22 age [~~when the perpetrator is in a position of authority over~~  
23 ~~the child and uses this authority to coerce the child to~~  
24 ~~submit~~];

25 (2) on an inmate confined in a correctional

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1 facility or jail when the perpetrator is in a position of  
2 authority over the inmate;

3 (3) by the use of force or coercion that  
4 results in personal injury to the victim;

5 (4) by the use of force or coercion when the  
6 perpetrator is aided or abetted by one or more persons;

7 (5) in the commission of any other felony; or

8 (6) when the perpetrator is armed with a  
9 deadly weapon.

10 Whoever commits criminal sexual penetration in the second  
11 degree is guilty of a second degree felony. Whoever commits  
12 criminal sexual penetration in the second degree when the  
13 victim is a child who is thirteen to eighteen years of age is  
14 guilty of a second degree felony for a sexual offense against  
15 a child and, notwithstanding the provisions of Section 31-18-  
16 15 NMSA 1978, shall be sentenced to a minimum term of  
17 imprisonment of [~~three~~] seven years, which shall not be  
18 suspended or deferred. The imposition of a minimum, mandatory  
19 term of imprisonment pursuant to the provisions of this  
20 subsection shall not be interpreted to preclude the imposition  
21 of sentencing enhancements pursuant to the provisions of  
22 Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

23 E. Criminal sexual penetration in the third degree  
24 consists of all criminal sexual penetration perpetrated  
25 through the use of force or coercion.

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1           Whoever commits criminal sexual penetration in the third  
2 degree is guilty of a third degree felony. [~~Whoever commits~~  
3 ~~criminal sexual penetration in the third degree when the~~  
4 ~~victim is a child who is thirteen to eighteen years of age is~~  
5 ~~guilty of a third degree felony for a sexual offense against a~~  
6 ~~child.~~]

7           F. Criminal sexual penetration in the fourth  
8 degree consists of all criminal sexual penetration:

9           (1) not defined in Subsections C through E of  
10 this section perpetrated on a child thirteen to sixteen years  
11 of age when the perpetrator is at least eighteen years of age  
12 and is at least four years older than the child and not the  
13 spouse of that child; or

14           (2) perpetrated on a child thirteen to  
15 eighteen years of age when the perpetrator, who is a licensed  
16 school employee, an unlicensed school employee, a school  
17 contract employee, a school health service provider or a  
18 school volunteer, and who is at least eighteen years of age  
19 and is at least four years older than the child and not the  
20 spouse of that child, learns while performing services in or  
21 for a school that the child is a student in a school.

22           Whoever commits criminal sexual penetration in the fourth  
23 degree is guilty of a fourth degree felony."

24           Section 2. Section 31-18-15 NMSA 1978 (being Laws 1977,  
25 Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--

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1 BASIC SENTENCES AND FINES-- PAROLE AUTHORITY-- MERITORIOUS  
2 DEDUCTIONS. --

3 A. If a person is convicted of a noncapital  
4 felony, the basic sentence of imprisonment is as follows:

5 (1) for a first degree felony resulting in  
6 the death of a child, life imprisonment;

7 (2) for a first degree felony for criminal  
8 sexual penetration of a child, life imprisonment;

9 [~~(2)~~] (3) for a first degree felony, eighteen  
10 years imprisonment;

11 [~~(3)~~] (4) for a second degree felony  
12 resulting in the death of a human being, fifteen years  
13 imprisonment;

14 [~~(4)~~] (5) for a second degree felony for a  
15 sexual offense against a child, fifteen years imprisonment;

16 [~~(5)~~] (6) for a second degree felony, nine  
17 years imprisonment;

18 [~~(6)~~] (7) for a third degree felony resulting  
19 in the death of a human being, six years imprisonment;

20 [~~(7)~~] (8) for a third degree felony for a  
21 sexual offense against a child, six years imprisonment;

22 [~~(8)~~] (9) for a third degree felony, three  
23 years imprisonment; or

24 [~~(9)~~] (10) for a fourth degree felony,  
25 eighteen months imprisonment.

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1           B. The appropriate basic sentence of imprisonment  
2 shall be imposed upon a person convicted and sentenced  
3 pursuant to Subsection A of this section, unless the court  
4 alters the sentence pursuant to the provisions of Section 31-  
5 18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

6           C. The court shall include in the judgment and  
7 sentence of each person convicted and sentenced to  
8 imprisonment in a corrections facility designated by the  
9 corrections department authority for a period of parole to be  
10 served in accordance with the provisions of Section 31-21-10  
11 NMSA 1978 after the completion of any actual time of  
12 imprisonment and authority to require, as a condition of  
13 parole, the payment of the costs of parole services and  
14 reimbursement to a law enforcement agency or local crime  
15 stopper program in accordance with the provisions of that  
16 section. The period of parole shall be deemed to be part of  
17 the sentence of the convicted person in addition to the basic  
18 sentence imposed pursuant to Subsection A of this section  
19 together with alterations, if any, pursuant to the provisions  
20 of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA  
21 1978.

22           D. When a court imposes a sentence of imprisonment  
23 pursuant to the provisions of Section 31-18-15.1, 31-18-16,  
24 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the  
25 basic sentence of imprisonment provided pursuant to the

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1 provisions of Subsection A of this section, the period of  
2 parole shall be served in accordance with the provisions of  
3 Section 31-21-10 NMSA 1978 for the degree of felony for the  
4 basic sentence for which the inmate was convicted. For the  
5 purpose of designating a period of parole, a court shall not  
6 consider that the basic sentence of imprisonment was suspended  
7 or deferred and that the inmate served a period of  
8 imprisonment pursuant to the provisions of Section 31-18-15.1,  
9 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

10 E. The court may, in addition to the imposition of  
11 a basic sentence of imprisonment, impose a fine not to exceed:

12 (1) for a first degree felony resulting in  
13 the death of a child, seventeen thousand five hundred dollars  
14 (\$17,500);

15 (2) for a first degree felony for criminal  
16 sexual penetration of a child, seventeen thousand five hundred  
17 dollars (\$17,500);

18 [~~(2)~~] (3) for a first degree felony, fifteen  
19 thousand dollars (\$15,000);

20 [~~(3)~~] (4) for a second degree felony  
21 resulting in the death of a human being, twelve thousand five  
22 hundred dollars (\$12,500);

23 [~~(4)~~] (5) for a second degree felony for a  
24 sexual offense against a child, twelve thousand five hundred  
25 dollars (\$12,500);

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1                    [~~(5)~~] (6) for a second degree felony, ten  
2 thousand dollars (\$10,000);

3                    [~~(6)~~] (7) for a third degree felony resulting  
4 in the death of a human being, five thousand dollars (\$5,000);

5  
6                    [~~(7)~~] (8) for a third degree felony for a  
7 sexual offense against a child, five thousand dollars  
8 (\$5,000); or

9                    [~~(8)~~] (9) for a third or fourth degree  
10 felony, five thousand dollars (\$5,000).

11                    F. When the court imposes a sentence of  
12 imprisonment for a felony offense, the court shall indicate  
13 whether or not the offense is a serious violent offense, as  
14 defined in Section 33-2-34 NMSA 1978. The court shall inform  
15 an offender that the offender's sentence of imprisonment is  
16 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-  
17 37 and 33-2-38 NMSA 1978. If the court fails to inform an  
18 offender that the offender's sentence is subject to those  
19 provisions or if the court provides the offender with  
20 erroneous information regarding those provisions, the failure  
21 to inform or the error shall not provide a basis for a writ of  
22 habeas corpus.

23                    G. No later than October 31 of each year, the New  
24 Mexico sentencing commission shall provide a written report to  
25 the secretary of corrections, all New Mexico criminal court

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1 judges, the administrative office of the district attorneys  
2 and the chief public defender. The report shall specify the  
3 average reduction in the sentence of imprisonment for serious  
4 violent offenses and nonviolent offenses, as defined in  
5 Section 33-2-34 NMSA 1978, due to meritorious deductions  
6 earned by prisoners during the previous fiscal year pursuant  
7 to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and  
8 33-2-38 NMSA 1978. The corrections department shall allow the  
9 commission access to documents used by the department to  
10 determine earned meritorious deductions for prisoners. "

11 Section 3. Section 31-21-10 NMSA 1978 (being Laws 1980,  
12 Chapter 28, Section 1, as amended) is amended to read:

13 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

14 A. An inmate of an institution who was sentenced  
15 to life imprisonment as the result of the commission of a  
16 capital felony, who was sentenced to life imprisonment as the  
17 result of a conviction for a first degree felony resulting in  
18 the death of a child or for a first degree felony for criminal  
19 sexual penetration of a child, who was convicted of three  
20 violent felonies and sentenced pursuant to Sections 31-18-23  
21 and 31-18-24 NMSA 1978 or who was convicted of two violent  
22 sexual offenses and sentenced pursuant to Subsection A of  
23 Section 31-18-25 NMSA 1978 and Section 31-18-26 NMSA 1978  
24 becomes eligible for a parole hearing after [he] the inmate  
25 has served thirty years of [his] the inmate's sentence.

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1 Before ordering the parole of an inmate sentenced to life  
2 imprisonment, the board shall:

3 (1) interview the inmate at the institution  
4 where ~~he~~ the inmate is committed;

5 (2) consider all pertinent information  
6 concerning the inmate, including:

7 (a) the circumstances of the offense;

8 (b) mitigating and aggravating  
9 circumstances;

10 (c) whether a deadly weapon was used in  
11 the commission of the offense;

12 (d) whether the inmate is a habitual  
13 offender;

14 (e) the reports filed under Section  
15 31-21-9 NMSA 1978; and

16 (f) the reports of such physical and  
17 mental examinations as have been made while in an institution;

18 (3) make a finding that a parole is in the  
19 best interest of society and the inmate; and

20 (4) make a finding that the inmate is able  
21 and willing to fulfill the obligations of a law-abiding  
22 citizen.

23 If parole is denied, the inmate sentenced to life  
24 imprisonment shall again become entitled to a parole hearing  
25 at two-year intervals. The board may, on its own motion,

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1 reopen any case in which a hearing has already been granted  
2 and parole denied.

3 B. Unless the board finds that it is in the best  
4 interest of society and the parolee to reduce the period of  
5 parole, a person who was convicted of a capital felony shall  
6 be required to undergo a minimum period of parole of five  
7 years. During the period of parole, the person shall be under  
8 the guidance and supervision of the board.

9 C. Except for sex offenders as provided in Section  
10 31-21-10.1 NMSA 1978, an inmate who was convicted of a first,  
11 second or third degree felony and who has served the sentence  
12 of imprisonment imposed by the court in an institution  
13 designated by the corrections department shall be required to  
14 undergo a two-year period of parole. An inmate who was  
15 convicted of a fourth degree felony and who has served the  
16 sentence of imprisonment imposed by the court in an  
17 institution designated by the corrections department shall be  
18 required to undergo a one-year period of parole. During the  
19 period of parole, the person shall be under the guidance and  
20 supervision of the board.

21 D. Every person while on parole shall remain in  
22 the legal custody of the institution from which ~~he~~ the  
23 person was released, but shall be subject to the orders of the  
24 board. The board shall furnish to each inmate as a  
25 prerequisite to ~~his~~ the inmate's release under its

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1 supervision a written statement of the conditions of parole  
2 that shall be accepted and agreed to by the inmate as  
3 evidenced by [~~his~~] the inmate's signature affixed to a  
4 duplicate copy to be retained in the files of the board. The  
5 board shall also require as a prerequisite to release the  
6 submission and approval of a parole plan. If an inmate  
7 refuses to affix [~~his~~] the inmate's signature to the written  
8 statement of the conditions of [~~his~~] the inmate's parole or  
9 does not have an approved parole plan, [~~he~~] the inmate shall  
10 not be released and shall remain in the custody of the  
11 institution in which [~~he~~] the inmate has served [~~his~~] the  
12 inmate's sentence, excepting parole, until such time as the  
13 period of parole [~~he~~] the inmate was required to serve, less  
14 meritorious deductions, if any, expires, at which time [~~he~~]  
15 the inmate shall be released from that institution without  
16 parole, or until such time that [~~he~~] the inmate evidences  
17 [~~his~~] acceptance and agreement to the conditions of parole as  
18 required or receives approval for [~~his~~] the inmate's parole  
19 plan or both. Time served from the date that an inmate  
20 refuses to accept and agree to the conditions of parole or  
21 fails to receive approval for [~~his~~] the inmate's parole plan  
22 shall reduce the period, if any, to be served under parole at  
23 a later date. If the district court has ordered that the  
24 inmate make restitution to a victim as provided in Section 31-  
25 17-1 NMSA 1978, the board shall include restitution as a

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1 condition of parole. The board shall also personally apprise  
2 the inmate of the conditions of parole and ~~[his]~~ the inmate's  
3 duties relating thereto.

4 E. When a person on parole has performed the  
5 obligations of ~~[his]~~ the person's release for the period of  
6 parole provided in this section, the board shall make a final  
7 order of discharge and issue ~~[him]~~ the person a certificate of  
8 discharge.

9 F. Pursuant to the provisions of Section 31-18-15  
10 NMSA 1978, the board shall require the inmate as a condition  
11 of parole:

12 (1) to pay the actual costs of ~~[his]~~ parole  
13 services to the adult probation and parole division of the  
14 corrections department for deposit to the corrections  
15 department intensive supervision fund not exceeding one  
16 thousand eight hundred dollars (\$1,800) annually to be paid in  
17 monthly installments of not less than twenty-five dollars  
18 (\$25.00) and not more than one hundred fifty dollars (\$150),  
19 as set by the appropriate district supervisor of the adult  
20 probation and parole division, based upon the financial  
21 circumstances of the defendant. The defendant's payment of  
22 the supervised parole costs shall not be waived unless the  
23 board holds an evidentiary hearing and finds that the  
24 defendant is unable to pay the costs. If the board waives the  
25 defendant's payment of the supervised parole costs and the

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1 defendant's financial circumstances subsequently change so  
2 that the defendant is able to pay the costs, the appropriate  
3 district supervisor of the adult probation and parole division  
4 shall advise the board and the board shall hold an evidentiary  
5 hearing to determine whether the waiver should be rescinded;  
6 and

7 (2) to reimburse a law enforcement agency or  
8 local crime stopper program for the amount of any reward paid  
9 by the agency or program for information leading to ~~[his]~~ the  
10 inmate's arrest, prosecution or conviction.

11 G. The provisions of this section shall apply to  
12 all inmates except geriatric, permanently incapacitated and  
13 terminally ill inmates eligible for the medical and  
14 geriatric parole program as provided by the Parole Board  
15 Act. "

16 Section 4. Section 31-21-10.1 NMSA 1978 (being Laws  
17 2003 (1st S.S.), Chapter 1, Section 9) is amended to read:

18 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS  
19 AND CONDITIONS OF PAROLE.--

20 A. If the district court sentences a sex  
21 offender to a term of incarceration in a facility designated  
22 by the corrections department, the district court shall  
23 include a provision in the judgment and sentence that  
24 specifically requires the sex offender to serve an  
25 indeterminate period of supervised parole for a period of

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1 not less than five years and not in excess of twenty years.  
2 A sex offender's period of supervised parole may be for a  
3 period of less than twenty years if, at a review hearing  
4 provided for in Subsection B of this section, the state is  
5 unable to prove that the sex offender should remain on  
6 parole. Prior to placing a sex offender on parole, the  
7 board shall conduct a hearing to determine the terms and  
8 conditions of supervised parole for the sex offender. The  
9 board may consider any relevant factors, including:

- 10 (1) the nature and circumstances of the  
11 offense for which the sex offender was incarcerated;
- 12 (2) the nature and circumstances of a prior  
13 sex offense committed by the sex offender;
- 14 (3) rehabilitation efforts engaged in by  
15 the sex offender, including participation in treatment  
16 programs while incarcerated or elsewhere;
- 17 (4) the danger to the community posed by  
18 the sex offender; and
- 19 (5) a risk and needs assessment regarding  
20 the sex offender, developed by the sex offender management  
21 board of the New Mexico sentencing commission or another  
22 appropriate entity, to be used by appropriate parole board  
23 personnel.

24 B. The board shall review the terms and  
25 conditions of a sex offender's supervised parole at two and

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1 one-half year intervals. When a sex offender has served the  
2 initial five years of supervised parole, the board shall  
3 also review the duration of the sex offender's supervised  
4 parole at two and one-half year intervals. When a sex  
5 offender has served the initial five years of supervised  
6 parole, at each review hearing the state shall bear the  
7 burden of proving to a reasonable certainty that the sex  
8 offender should remain on parole.

9 C. The board may order a sex offender released  
10 on parole to abide by reasonable terms and conditions of  
11 parole, including:

12 (1) being subject to intensive supervision  
13 by a parole officer of the corrections department;

14 (2) participating in an outpatient or  
15 inpatient sex offender treatment program;

16 (3) a parole agreement by the sex offender  
17 not to use alcohol or drugs;

18 (4) a parole agreement by the sex offender  
19 not to have contact with certain persons or classes of  
20 persons; and

21 (5) being subject to alcohol testing, drug  
22 testing or polygraph examinations used to determine if the  
23 sex offender is in compliance with the terms and conditions  
24 of ~~[his]~~ the sex offender's parole.

25 D. The board shall require electronic real time

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1 monitoring of every sex offender released on parole for the  
2 entire time the sex offender is on parole. The electronic  
3 monitoring shall use global positioning system monitoring  
4 technology or any successor technology that would give  
5 continuous information on the sex offender's whereabouts and  
6 enable law enforcement and the corrections department to  
7 determine the real time position of a sex offender to a high  
8 level of accuracy.

9 [D-] E. The board shall notify the chief public  
10 defender of an upcoming parole hearing for a sex offender,  
11 and the chief public defender shall make representation  
12 available to the sex offender at the parole hearing.

13 [E-] F. If the board finds that a sex offender  
14 has violated the terms and conditions of [~~his~~] the sex  
15 offender's parole, the board may revoke [~~his~~] the sex  
16 offender's parole or may order additional terms and  
17 conditions of parole.

18 [F-] G. The provisions of this section shall  
19 apply to all sex offenders, except geriatric, permanently  
20 incapacitated and terminally ill inmates eligible for the  
21 medical and geriatric parole program as provided by the  
22 Parole Board Act.

23 [G-] H. As used in this section, "sex offender"  
24 means a person who is convicted of, pleads guilty to or  
25 pleads nolo contendere to any one of the following offenses:

